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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,032	10/06/2000	Christopher S. Nolan	420-002	1056

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EXAMINER
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FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

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Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/684,032	<b>Applicant(s)</b> NOLAN, CHRISTOPHER S.	
	<b>Examiner</b> Charles A. Fox	<b>Art Unit</b> 3652	

-- **Th MAILING DATE of this communication app ars on th cover sheet with th correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) 12, 14, 16 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

Newly submitted claims 12,14,16 and 18-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

claims 12,16 and 20 are drawn to a liner for a vehicle cargo area that requires pneumatic pressure to deploy the liner;

claims 14,18 and 19 all require the liner be free standing, a limitation that has to this time not been set forth.

The previously claimed liner and methods of using it have not previously been claimed or argued by the applicant, and the state of the liner art has two well known species of liners, free standing pneumatically deployed liners and those that are manually deployed. Based on the claims previously presented the later is the species of liner that was originally claimed by the applicant.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12,14,16 and 18-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4-6,9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fell et al. . In regards to claim 1 Fell et al. (US 3,951,284) disclose a moisture proof liner (20) for a shipping container comprising:

- four panels of impervious film to match the top, bottom, and sides of the container;

- two end panels to complete the liner;

- an access panel in the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

- a closure to seal the liner to protect the cargo from moisture.

In regards to claim 2 Fell et al. further disclose tubes (45,48) attached to the access openings of the liner (20).

Regarding claim 4 Fell et al. also disclose that the tubes (45,48) are closed with a tie (46) and tucked inside the container (30) during transport.

In regards to claims 5 and 6 Fell et al. also disclose access openings for containers having openings on one or more sides depending on the configuration of the container.

Regarding claims 9 and 10 Fell et al. teaches a method of installing a moisture proof liner for a container comprising the steps of:

- providing a liner with four elongated panels and two end panels of impervious material to complete the liner;

cutting an access opening in the liner;  
positioning and erecting the liner in the container;  
transferring cargo into the container and sealing the liner to protect the moisture against moisture;  
attaching an open ended tube to the access opening of the liner;  
passing cargo through the tube and opening during transfer of the cargo.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-6,9,10,13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. In regards to claim 1 Fell et al. (US 3,951,284) teach a moisture proof liner (20) for a shipping container comprising:

four panels of impervious film to match the top, bottom, and sides of the container;  
two end panels to complete the liner;  
an access panel in the end of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

While Fell et al. do not explicitly teach the opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening at a location in the liner corresponding to where there is an opening in the container.

In regards to claim 2 Fell et al. further teach tubes (45,48) attached to the access openings of the liner (20).

Regarding claim 4 Fell et al. further teach that the tubes (45,48) are closed with a tie (46) and tucked inside the container (30) during transport.

In regards to claims 5 and 6 Fell et al. also teach access openings for containers having openings on one or more sides depending on the configuration of the container.

Regarding claims 9 and 10 Fell et al. teaches a method of installing a moisture proof liner for a container comprising the steps of:

- providing a liner with four elongated panels and two end panels of impervious material to complete the liner;

- cutting an access opening in the liner;

- positioning and erecting the liner in the container;

- transferring cargo into the container and sealing the liner to protect the moisture against moisture;

- attaching an open ended tube to the access opening of the liner;

- passing cargo through the tube and opening during transfer of the cargo.

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While Fell et al. do not explicitly teach the method of providing an opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to provide the opening at a location in the liner corresponding to where there is an opening in the container.

In regards to claims 13,15 and 17 teach a moisture proof liner (20) for a shipping container comprising:

Four elongated panels of impervious film to match the top, bottom, and sides of the container;

two end panels to complete the liner;

an access panel in the side of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

While Fell et al. do not explicitly teach the opening in the elongated side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening at a location in the liner corresponding to where there is an opening in the container, and to not place an opening in a panel that is not adjacent to an opening in the container.

Claims 3,7, and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al as applied to claims 1 and 2 above, and further in view of Krein et al.

In regards to claim 3 Fell et al. teach the limitations of claim 2 as above, they do not teach the liner and tubes as being a plastic sheet material joined by heat welding of the

minating surfaces. Krein et al. (US 5,028,197) teach a plastic liner with joints that are fused together using heat. See column 5 lines 43-57.

In regards to claim 7 the limitations of claim 1 are met by Fell et al. as above, they do not specifically teach the liner as having gussets. However it would have been obvious to one of ordinary skill in the art, at the time of invention that gussets would be formed on the liner during the course of folding the liner and that the gussets would disappear as the liner was inflated.

In regards to claim 11 the limitations of claim 10 are met by Fell et al. as above. Fell et al. do not teach holding the upper corners of the tube to offer protection during transfer of cargo. Fell et al. do teach supporting the tube during loading and unloading with a stand (47) and a chute (44). It would have been obvious to one of ordinary skill in the art, at the time of invention that the supports for the tube taught by Fell et al. could be modified in many ways depending on the size of the tube and the nature of the cargo being transferred onto or off of the container.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claim 1 above, and further in view of Derby. Fell et al. teach the limitations of claim 1 as above they do not teach the end panels as being folded and heat sealed. Derby US 5,746,862 teaches using a liner for a container with panels having folding gussets (22,24). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the liner taught by Fell et al. with the gussets taught Derby in order to allow easy storage of the liner when not in use as well as making and deployment of the liner easier.



***Response to Amendment***

The amendments filed on March 15, 2004 have been entered into the record.

***Response to Arguments***

Applicant's arguments filed March 15, 2004 have been fully considered but they are not persuasive. In regards to the anticipation rejection of claims 1,2,4-6,9 and 10 to Fell et al., the limitation of the opening being located in an elongated side panel is inherent in the reference. Applicant is directed to column 2 lines 9-13 in the Fell reference where the opening for the container and liner are taught as being placed in any wall of the container. While Fell et al. show one embodiment in their figures they also disclose the invention as claimed in the instant application.

In regards to the obvious rejections of claims 1,2,4-6,9 and 10 to Fell et al., the applicant argues that placing the opening in the wall will alter the principle operation of the liner such that it will no longer work as intended. Applicant is directed to column 8 lines 28-39 where Fell et al. teach that his liner can be used in rail cars with openings in an elongated side wall.

In regards to the rejection of claims 5 and 6 the above mentioned passage clearly states that the opening can be in at least one side wall of a container, as such one of ordinary skill in the art could place it at a mid point of said wall or contemplate that more than one opening could be provided in the liner.

In regards to the rejection of claim 7 the applicant does not disclose what part of the claim is ignored in the rejection. As no factual argument is presented there can be no response to the argument.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294. The examiner can normally be reached between 7:00-5:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CAF



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